

APPEAL NO. 171923
FILED OCTOBER 5, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Contested case hearings (CCH) were held on June 1 and June 29, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ).¹ The ALJ resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does extend to complex regional pain syndrome/reflex sympathetic dystrophy (CRPS/RSD) of the left lower extremity; (2) the respondent (claimant) had not reached maximum medical improvement (MMI) as of September 27, 2016; and (3) since the claimant had not reached MMI, an impairment rating (IR) could not be assigned.

The appellant (carrier) appealed the ALJ's determinations regarding extent of injury, and MMI/IR as being contrary to the great weight and preponderance of the evidence and erroneous as a matter of law.

The claimant responded, urging affirmance.

DECISION

Reversed and remanded.

It is undisputed that the claimant, an emergency medical technician, sustained a compensable injury on (date of injury), when he fell while climbing into an ambulance, catching his left foot on a step and causing injury to his left knee. The carrier has accepted as compensable a left knee sprain.

EXTENT OF INJURY

The ALJ's determination that the compensable injury of (date of injury), extends to CRPS/RSD of the left lower extremity is supported by sufficient evidence and is affirmed.

MMI/IR

In the discussion section of his Decision and Order the ALJ noted that(Dr. B), appointed by the Texas Department of Insurance, Division of Workers'

¹ Section 410.152 was amended in House Bill 2111 of the 85th Leg., R.S. (2017), effective September 1, 2017, changing the title of hearing officer to ALJ.

Compensation (Division) to serve as designated doctor for the purpose of addressing MMI, IR and extent of injury, examined the claimant on September 27, 2016, and stated, in part:

Based on that decision on the extent of the claimant's injury, Dr. B determined that the claimant was not at MMI as of the date of his examination and therefore did not assign an IR.

In his Finding of Fact No. 4 the ALJ stated:

4. [Dr. B] provided the alternate certification of [MMI] and [IR], based on his determination that the compensable injury extended to and included CRPS/RSD, that the claimant had not reached MMI as of the date of his examination on September 27, 2016, and that an [IR] could not therefore be assigned.

In his Finding of Fact No. 5 the ALJ stated:

5. The determination by the designated doctor that the claimant was not at MMI as of September 27, 2016, is not contrary to the preponderance of the other medical evidence.

In evidence, however, is Dr. B's Report of Medical Evaluation (DWC-69) referred to by the ALJ in Finding of Fact No. 4 as the doctor's alternate certification. In his DWC-69, Dr. B indicates that, with regard to the accepted left knee sprain and the disputed left lower extremity CRPS/RSD, the claimant reached MMI on September 27, 2016, with a 12% IR. The certification of MMI and assignment of IR listed on the DWC-69 is confirmed in Dr. B's accompanying narrative report. We note that Claimant's Exhibit No. 6 purports to be the designated doctor report of Dr. B and that page 17 of such exhibit contains the statement that "[t]his patient is clearly not at MMI (emphasis included). . . ." We note further, however, that page 17 of Claimant's Exhibit No. 6 is not a part of Dr. B's medical evaluation narrative but rather page 4 of a medical report prepared by (Dr. W) and unrelated to Dr. B's certification of MMI and assignment of IR.

Given a review of the evidence admitted, the ALJ's statement that Dr. B determined that the claimant was not at MMI as of the date of his examination and therefore did not assign an IR as well as the ALJ's Finding of Fact Nos. 4 and 5 constitute material misstatements of fact. We accordingly reverse the ALJ's determination that the claimant had not reached MMI as of September 27, 2016; and that since the claimant had not reached MMI, an IR could not be assigned and we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

We note that the date of statutory MMI was not discussed at the CCH and the ALJ made no mention or finding regarding statutory MMI. The date of injury was (date of injury). In evidence are records which indicate the claimant may have lost time from work due to the compensable injury beginning on September 20, 2015, and continuing for a two-month period. Section 401.011(30) provides MMI means the earlier of: (A) the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated; (B) the expiration of 104 weeks from the date on which income benefits begin to accrue; or (C) the date determined as provided by Section 408.104. Given there is some evidence that the eighth day of disability was September 27, 2015, the date of statutory MMI for the claimant may have passed.

SUMMARY

We affirm the ALJ's determination that the compensable injury extends to CRPS/RSD of the left lower extremity.

We reverse the ALJ's determinations that the claimant had not reached MMI as of September 27, 2016, and that since the claimant had not reached MMI, an IR could not be assigned, and we remand the issues of MMI/IR to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to request that the parties stipulate to the date of statutory MMI applicable to this case, or if the parties are unable to so stipulate, take evidence from the parties so the ALJ can make a determination regarding the correct date of statutory MMI.

The ALJ is to consider all of the evidence, make findings of fact, conclusions of law and render a decision concerning MMI and IR which are supported by the evidence and consistent with this decision. The certification of MMI can be no later than the statutory date of MMI.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the ALJ, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge